

Automobile No-Fault Independent Medical Examinations

**Report to the
Budget Committee on Health Care
Senator Judy Lee, Chairman**

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Executive Summary

At the direction of the 2001 Legislative Assembly, the North Dakota Insurance Department initiated a study of the North Dakota automobile Independent Medical Examination review process to review the impact that Independent Medical Examinations have on the provision of motor vehicle insurance benefits in the state.

The Department held three public input sessions at which it received oral comments from numerous interested persons. Others filed written comments with the Department. The information gathered from public comments is provided in Part I of the report.

The Insurance Department also conducted a study of the insurance industry relative to the industry's use of Independent Medical Examinations (IMEs) and Independent Records Review (IRR) in the handling of claims. Part II of the report provides the results of the PIP closed claim study which covered the period August 1, 2001, through August 30, 2002.

Certain parties criticized the present IME process, arguing that IMEs at times impact benefits by terminating the benefits prematurely. They argue that the examinations are not independent or impartial, but rather are conducted most often by out-of-state examiners who are hired by the insurance company and who most often are not regularly practicing medical service providers and who depend on the income from the insurance companies for their livelihood. They argue that the examiners, because they are dependent on the insurance industry for their livelihood, are biased in favor of the insurance industry. The critics note that the examiners most often find in favor of the insurance company.

As one solution to the problem, the critics suggest that the state implement some form of alternate dispute mechanism that would involve an impartial review by a third party to settle disputes between the treating provider and the company examiner. They note that an alternative mechanism is especially significant for small claims that are do not justify the hiring of an attorney to pursue the dispute through the expensive legal process.

The insurance industry argues that IMEs are necessary to control questionable claims. It argues that controlling questionable claims allows the company to control no-fault costs, thereby enabling the industry to provide legitimate no-fault benefits at a reasonable cost. The industry also argues that at present the disputes can be settled through the legal process. The industry also notes that any form of alternate dispute resolution will involve more cost to the companies, a cost that will ultimately be passed on to the policyholders.

The interested parties submitted numerous other comments and suggestions that are set forth in the report that is attached.

The Department study notes that several of the other no-fault states have implemented some form of no-fault alternate dispute mechanism, including arbitration, mediation, informal conciliation, or review panels.

Each of the alternative dispute mechanisms involved some expense, with the expense paid by either the claimant, the company, or the state's taxpayers, depending upon the scope of the alternative mechanism and upon the manner in which the alternative mechanism is financed.

Senate Bill No. 2244 invited any recommendations as a result of the study. The Department does not have any specific recommendations. The attached report notes that if the Department were to make a recommendation, that it would be that the Legislature consider an alternative dispute mechanism as an alternative to the formal legal process, especially for smaller claims.

The study does not attempt to estimate the cost of implementing any specific change to the present system, but the Department can do so if a specific change is proposed by any of the interested parties or the legislature.

A summary of comments and proposed changes appears at the end of Part I of the report.

A copy of the Department's docket sheet that lists the parties filing comments is also attached.

Part I

General Discussion

The North Dakota Automobile Accident Reparations Act, N.D. Century Code Chapter 26.1-41, is a remedial act that was designed to reduce litigation, promote prompt resolution of claims, stabilize insurance prices, and provide ready availability of coverage necessary to the provision of accident benefits. (Hillborne v. Nodak Mutual Insurance Company, Cass County District Court, Judge Erickson, May 20, 1999.)

No-fault insurance, as it is known, was designed to encourage quick, informal payments to assure injured plaintiffs are compensated for their injuries. One of the primary purposes of the no-fault law is to avoid protracted litigation over issues of fault or causation. The intent was to secure rapid payment of claims by eliminating the fault controversy and wasteful litigation, similar to the objectives of workers compensation statutes. (Note: See Piatz v. Austin Mutual Ins. Co., 2002 N.D. 115, and cites to Weber v. State Farm Mutual Auto Ins. Co., 284 N.W.2d 299, 301 (N.D. 1979).)

The trade-off between “no-fault” and the previous fault based system was that no claim could be pursued against a secured person unless a party first met the “no-fault threshold”. N.D. Cent. Code § 26.1-41-08. The law was designed to correct the perceived vices of an entirely fault based system.

N.D. Cent. Code § 26.1-41-11, the North Dakota Auto Accident Reparations Act, requires that an injured person submit to an examination by a physician designated by the no-fault carrier to establish continued eligibility for benefits. The examination, referred to as an Independent Medical Examination or an IME, is criticized by some as being unfair, mostly because the physicians designated by the no-fault carrier are perceived as being biased in favor of the no-fault carrier and against the injured person.

To address the criticism, the 57th Legislative Assembly considered a proposed change to the no-fault law in Senate Bill No. 2288. The proposal was patterned after the Colorado IME system wherein a dispute over the need for continued medical treatment is referred to an IME examiner selected by the parties from a list of five examiners selected by the Colorado Insurance Department. The Department is required to maintain a list of examiners that are willing to perform IMEs.

Senate Bill No. 2288 as initially proposed was never acted upon. It was amended to eliminate the Colorado proposal and to substitute in its place a study of the impact that IMEs have on no-fault benefits. The bill as passed reads:

Before November 1, 2002, the insurance commissioner shall submit a report to the legislative council regarding motor vehicle insurance independent medical examinations. The report must include an analysis of the impact independent medical examinations have on the provision of motor vehicle insurance benefits in the state; a review of the medical service providers who perform independent medical

examinations; a review of how other states regulate independent medical examinations; and any recommendations.

As directed by the Legislature, the Insurance Commissioner opened an investigation and scheduled three public input hearings, inviting comments from interested persons. Hearings were held in Fargo, Minot, and Bismarck on November 14, 19, and 28, respectively. Witnesses presented approximately six hours of testimony. Injured persons, insurance company representatives, plaintiff attorneys, defense attorneys, chiropractors, a medical service representative, and others submitted testimony. Approximately 40 persons attended. Other interested persons filed written comments. The docket card attached to Part I lists the written comments received from interested persons.

The comments received during the investigation are summarized below. The section titles correspond to the topics referred to in Senate Bill No. 2288. The questions are those that the Commissioner posed to the interested public in the Order requesting public input.

Issue 1

Impact Independent Medical Examinations Have On The Provision Of Motor Vehicle Insurance Benefits In The State

Do IMEs impact the provision of motor vehicle benefits in the state, and if so, how?

1. Complaining parties argue that the no-fault consumers are getting less than that for which they pay. They argue that no-fault insurance is mandatory and the consumer must pay the premiums for coverage, but that benefits are denied if the consumer is injured. They argue that insurance companies use IMEs to terminate no-fault benefits before the injured person is totally healed.
2. Companies argue that they request IMEs only in the most egregious situations and that the relatively infrequent use of IMEs has no significant impact on the provision of motor vehicle benefits in the state. Companies note that very few IMEs are requested when compared to the total number of claims filed and argue that that fact shows that companies are fair in requesting IMEs.
3. Part II statistics show that of 4,371 claims closed during the study, IMEs or IRRs were requested in only 202, or 4.6% of the claims.
4. Companies also note that to be reimbursable, no-fault medical costs must be (1) reasonable, (2) medically necessary, and (3) caused by the accident. They note that the present IME system actually helps control no-fault costs by eliminating treatment that is unreasonable, not medically necessary, or not related to the

accident. They argue that by helping to control no-fault claims costs, the IME process keeps premiums low. In short, companies argue that IMEs help to control unrelated, exaggerated, or excessive claims.

5. Companies also note that most claim disputes involve a low impact motor vehicle accident that results in prolonged treatment for a neck or back injury, a previous injury that required similar treatment, treatment for an injury that does not match the facts of the accident, or treatment that does not match the injury suffered in the accident. They note that the IME is a safeguard for the companies and note that the safeguard is used sparingly, most often only when a treatment becomes questionable. Companies believe that the present IME program is working fine.
6. Part II statistics show that 47% and 37% of the total claims involved neck and back injuries, respectively, but that 83% and 72% of the IMEs involved neck and back claims, respectively.

Do problems exist with the present IME program and, if so, what problems exist? If problems exist with the present IME program, how should the problems be addressed?

7. The Department received numerous comments concerning the problems with the present IME system and received other comments suggesting how to fix the problems.
8. Most company representatives testified that, for the most part, the no-fault law is working satisfactorily in North Dakota. Other persons testified that it is not.
9. Complaining parties argue that the IME examiner is not independent. They argue that the insurance company hires the examiners and chooses an examiner that is biased in favor of the company. They note that the company most often hires out-of-state examiners that are not practicing providers. They note that the examiners most often rely on the insurance industry for the substantial part, if not all, of their income. As a result, they note that the examiners favor the company in order to continue a good relationship with the company.
10. Companies argue that they are forced to use out-of-state examiners because local doctors are reluctant to do IMEs. Medical representatives report that local doctors are reluctant to do an IME because of the potential for getting involved in litigation.
11. The companies note, in support of their right to select an examiner of the company's choice, that since the injured person selects a treating doctor that is supportive of continuing treatment, the companies should be allowed to select a doctor that the company prefers. Companies note that if there is disagreement between the examining doctors, the disagreement should be settled in the courts.

12. Complaining parties argue that the IME examiner most often is a physician who is not of the same discipline as the treating provider. They note that physicians have a bias against chiropractors and against physical therapists and massage therapists.
13. Part II statistics show that of 148 IMEs, in 71 or 48% the treating provider was a physician and in 68 or 46% the treating doctor was a chiropractor. At the review level, physicians performed 105 of 148 or 71% of the reviews and chiropractors performed 34 or 23% of the reviews.
14. Companies note that very few claims are referred for an IME and that those that are referred are referred because of circumstances that raise questions regarding the injury and the treatment. The companies note that IMEs are requested (1) if a file shows a prolonged treatment for what appears to be a minor injury, (2) if a treatment does not match the alleged injury, or (3) if the alleged injury does not match the alleged accident. At other times an IME is requested if the injured person has suffered a similar injury in a previous accident for which the person was receiving treatment. Companies note that other IMEs are requested treatment involves a provider that has a history of questionable treatment.

What criteria are being used to trigger a request for an IME?

15. Most companies do not have specific criteria for requesting an IME. IMEs are requested if something unusual, a “red flag”, appears in the file. These “red flags” include those things as mentioned above, such as (1) prolonged treatment for minor injuries, (2) treatment that does not match the alleged injury, (3) injury that does not match the alleged accident, and (4) a pre-existing condition that is difficult to separate from the alleged injury. Also, companies note certain treating physicians, chiropractors, and physical or massage therapists are suspect and trigger IMEs more often than others.

Are the criteria being used to trigger a request for an IME reasonable? If not, why not?

16. The companies argue that the criteria for triggering an IME as described above are reasonable and note that only the more questionable files are referred for an IME. They also argue that the statistics show that most of the claims are terminated after an IME and argue that these statistics show that companies are conservative when requesting IMEs.
17. Part II of the report provides statistics relative to this issue. It shows that of the 4,371 closed claims studied, a total of 202 claims or 4.6% involved an IME or IRR request. Of the 148 IME claims, 122 or 82.4% were terminated. Of the 54 IRR claims, 29 or 53.7% were terminated.

Are the criteria being used to trigger a request for an IME being applied uniformly and if not, how are the criteria not being applied uniformly?

18. Companies argue that the IMEs are being used infrequently and only in those claims that are or become questionable and raise “red flags” and, therefore, are being used uniformly. Other parties complain that IMEs are sometimes requested shortly after an accident, long before a company can identify whether or not a claim is questionable. The survey results from Part II do not indicate that the industry is requesting IMEs or IRRs prematurely. The time period between the date of claim and the IME ranged from 25 to 4,382 days with an average of 639 days, over 21 months.

Are IMEs being requested prematurely and, if so, what is a reasonable time or circumstance after which an IME should be requested?

19. The Department’s PIP survey discussed in Part II of the report indicates that the time after which an IME is requested varies widely and varies with the circumstances of each claim. As noted above, the average time lapse between the date of filing and the IME was 639 days with the range being from 25 days to 4,382 days (over 12 years).

What costs are involved in the IME process and are the costs reasonable?

20. The Department’s PIP survey discussed in Part II indicates that the average amount of fees and expenses paid by an insurer for an independent medical exam is roughly \$1,300, ranging from \$150 to \$4,649 and that the average of the amount of fees and expenses paid by an insurer for an IRR is roughly \$400. It can be said that IMEs are expensive, but it is difficult to determine whether or not the costs are reasonable because the cost must be balanced by the money saved by the companies when improper claims are terminated as a result of an IME.

Issue 2

Are Medical Service Providers Willing to Perform Independent Medical Examinations?

Are practicing North Dakota medical service providers willing to perform IMEs?

1. Even though there are a few North Dakota medical service providers that will conduct an IME, testimony confirms that for the most part North Dakota medical service providers are not willing to conduct an IME. For the most part the majority of the providers are not willing to do so because of the dislike for getting involved in a lawsuit. Part II shows that IMEs are being performed by both physicians and chiropractors.

Are medical service providers generally available to perform IMEs within North Dakota?

2. IMEs are performed in North Dakota, although for the most part, not by providers that practice in North Dakota. Companies most often use examiners from out of state because local providers are reluctant to get involved, as noted above. Those practitioners travel to North Dakota or to neighboring communities and do the exams most often within the state or in cities adjacent to the state. At times exams are performed in communities in other states but along the North Dakota border, such as Moorhead, Minnesota.
3. Part II shows that of the 148 IMEs, 61 were conducted in Bismarck, 34 in Moorhead, 13 in Fargo, 10 in Grand Forks, and 7 in West Fargo.

Are the medical service providers performing IMEs qualified to perform the IMEs in question?

4. Complaining parties argue that at times examiners are not of the same discipline as the treating provider and at times are uninformed with respect to the patient's file or the injury. These complaints raise questions regarding the qualifications of the examiner conducting the exam, but not the qualifications of the examiners in general.
5. Part II shows similar statistics for examinations performed by medical doctors and chiropractors. Out of the 148 PIP claims in which a claim was denied after an IME, 21 or 48% of the claims the treating medical service provider was a physician; in 68 or 46% of the claims the provider was a chiropractor. It should also be noted that in 76% of the claims, the examiner was of the same discipline as the treating medical service provider.

Are the medical service providers conducting appropriate IMEs on the injured person before issuing a report?

6. Complaining parties argue that certain exams are not conducted in an appropriate manner. Testimony revealed complaints of medical service providers spending only 5 or 10 minutes on an examination, exams being performed in rented motel rooms, examiners showing little interest in the patient or the injury, and examiners showing behavior that suggests that the results of the exam were pre-determined.
7. Companies argue that if the examination is not appropriate and if an injured person notifies the company of an inappropriate examination that the company will address the concerns with the examiner and correct the problem. They also note that companies are concerned about the allegations of inappropriate exams because an inappropriate examination will harm the company's position if the dispute goes to trial.

8. The information in Part II shows that during the time of the study, only 10 of the 151 claims denied as a result of an IME or an IRR led to the filing of a lawsuit, and of those, only 2 went to trial.

Are the IMEs being performed fairly? If not, explain.

9. Complaining parties argue that IMEs are not performed fairly and that, in fact, IMEs are adverse company exams and are not independent. They argue that often the result seems predetermined and note that a very high percentage of exams result in a recommendation that favors the company, suggesting that the exams are not performed fairly.
10. The statistics in Part II show that 82.4% of the claims that involved IMEs and 53.7% of the claims that involved IRRs were terminated as a result of the IME.
11. Companies argue that the exam process must be conducted fairly otherwise the company's position will be compromised in litigation if the dispute goes to trial.
12. Opposing parties note in response that few of the complaints actually go to trial because of the small amount of money in dispute compared to the costs of going to trial, so that the threat of litigation is not a significant deterrent for the companies. As noted above, the study results in Part II show that only 10 of the 151 claims in which a review was requested led to the filing of a lawsuit and only 2 actually went to trial.

Are the medical service providers being impartial in the examination?

13. Opposing parties argue that the examiners are not being impartial during the examination. They note that the examiner's superficial interest in the exam suggests that the exam results are predetermined. They also argue that the large percentage of exams that are decided in favor of the company suggests that the providers are not being impartial in the examination.
14. Part II of this report provides information relative to the number of claims that reviewed and the results of the review. It shows that even though a large number of claims are terminated after an IME or IRR, the reviewing medical service providers, whether a medical doctor or a chiropractor, seem to recommend similar results and have similar percentages of terminations, with both physicians and chiropractors recommending terminating over 80% of the claims received.
15. In response, companies again note that the company will be prejudiced in a trial if the exams are biased although the attached statistics show that few denied claims result in litigation that goes to trial.

Issue 3

How Do Other States Regulate Independent Medical Examinations?

What states regulate IMEs and how do the regulations in those states differ from the regulations in North Dakota?

1. The 13 no-fault states have a wide assortment of programs and procedures that attempt to facilitate the resolution of disputes over the continuing treatment of no-fault injuries and attempt to control the costs of the IMEs and the costs of medical treatments.
2. Minnesota requires binding arbitration for all disputes for claims of less than \$10,000. Examiner must be of the same specialty or profession as the treating provider.
3. New York, Hawaii, District of Columbia, Utah, and other states allow for some form of arbitration--some voluntary, some mandatory.
4. New York law also allows for informal conciliation of disputed claims.
5. Florida allows for mediation of disputes of less than \$10,000.
6. Hawaii's mandatory coverage applies to medical treatment only and limits chiropractic and acupuncture treatments to 30. Other PIP coverage is optional.
7. Several states allow the consumer more choices with respect to the level of no-fault coverage desired. Some set mandatory minimum PIP benefit levels and allow the companies to offer additional optional PIP coverage. Other states offer the coverage, but allow the consumer to choose from several plans with varying deductibles, again allowing the consumer more choice in deciding the amount of insurance to purchase.
8. Colorado uses a panel of examiners and provides names of five examiners to the parties in dispute, each of which strike two, leaving the last as the examiner.
9. Several states try to control the costs of no-fault benefits by establishing treatment standards and guidelines, similar to those developed for workers compensation claims. Other states such as Utah have set fee schedules that control the cost of treatment by medical service providers.
10. Pennsylvania has established a peer review board that resolves disputes relating to the necessity of medical treatment. It has also developed a fee schedule for medical treatments.

11. Hawaii requires a medical prescription for chiropractic treatment or message or physical therapy.
12. Florida requires the injured person to pay 20% of cost of medical treatment. Claims must be submitted within 35 days of treatment to be payable. Examiner must be actively practicing.
13. New York maintains a list of examiners and selects the examiner, rather than allowing the insurer to select the examiner.
14. New Jersey refers disputes to a dispute resolution professional. The professional may request a medical review by a medical review organization that may require a separate medical examination by a provider of the same discipline. New Jersey Insurance Department rules include a list of standards for medical review organizations. Examiner must be active practitioners that obtain at least one-half of their income from practice in their area of specialty. The Insurance Department also developed and maintains a schedule of allowable fees for IME examiners for examinations.
15. Utah law allows for independent exams upon request of the company if the policy contains such a provision. To settle disputes the law allows for an examination by a panel of not more than three licensed physicians. The panel must consist of health care professionals within the same license classification and specialty as the provider of the claimant's medical services or expenses. The insurance company selects the examining physicians and pays the costs. Most often the exams are performed by one examiner. Disputes can be settled by either arbitration or by civil action. Every other year the Insurance Department publishes a relative value study of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person. The Department contracts with Relative Value Studies, Inc., Denver, Colorado, to prepare the fee schedules.
16. Massachusetts law allows the insurance company to schedule exams as necessary. The Company selects the examiner, but as a practice the plaintiff attorneys will refuse to send a claimant to a doctor that is considered unfair.

What states have IME programs that are considered workable?

17. At the time of this report, 13 states have some form of a no-fault program. No-fault states other than North Dakota seem to believe that their programs are working in their state, although each state has groups that praise the program and other groups that criticize the program.

What regulations in other states are preferable to North Dakota's regulations and why?

18. It is difficult to determine whether or not other states' regulations are preferable to North Dakota. For example, Minnesota requires binding arbitration for disputed

claims of less than \$10,000. Colorado has developed a panel of examiners, from which the parties select one of five that are recommended by the Insurance Department. The systems are criticized by some and praised by others.

What regulations in other states will improve benefits of motor vehicle insurance?

19. It is difficult to say whether any change in regulations will improve no-fault insurance in North Dakota.

What regulations in other states, if adopted in North Dakota, will decrease the costs of, or the need for, conducting IMEs?

20. It is difficult to tell if any change in regulation will decrease the cost of, or the need for, conducting IMEs.

What regulations in other states, if adopted in North Dakota, will decrease the cost of motor vehicle insurance in North Dakota?

21. It is difficult to tell whether any change in regulation will decrease the cost of motor vehicle insurance in North Dakota.

Issue 4

Recommendations

What changes, if any, should be made to the present North Dakota IME regulations?

1. Even though interested parties made numerous suggestions for change to the present no-fault system, most parties agreed that the present system does what it was intended to do: simplify claims handling, expedite claims payments, and prevent unnecessary litigation over benefits.
2. The closed claim study shows that only a small percentage of claims result in IMEs or IRRs, but even so there are concerns regarding fairness of the process. There are also concerns about the lack of recourse for the consumer after the IME, especially for smaller claims.
3. Interested parties suggest implementing an alternative dispute mechanism as an alternative to formal legal action. It should be noted that several of the other no-fault states have implemented such systems.
4. Therefore, if the Department has a recommendation, it would be to consider an optional dispute resolution process as an alternative to the formal legal process. Since the IME process is inherently a hostile or adversarial process, it seems reasonable to provide consumers with access to a process less formal and less expensive than formal litigation, especially for consumer with smaller claims.

5. The Department does not have a specific method in mind as there are a variety of choices and it would best be left to the Legislature to select the method best suited for our consumers.

How will the proposed changes improve the present IME process?

6. While the industry feels the present system is fair, the consumers would benefit should the Legislature establish some form of alternative dispute resolution by having access to a less formal and less expensive alternate dispute process. Consumers consider such a system more fair than the present system.

How will the proposed changes improve the benefits of motor vehicle insurance in North Dakota?

7. Some additional cost will be involved in an alternative dispute process, possibly by both parties, but the cost may be justified. An alternative process will provide consumers with a system for settling disputes that is perceived to be more fair and just than the present system.

How will the proposed changes impact the cost, or the process, of conducting IMEs and the cost of motor vehicle insurance?

8. A revised program most probably will result in additional cost to the system, but the overall cost to the industry and the impact on the overall cost of motor vehicle insurance may be negligible. Without a specific proposal the Department is unable to quantify cost. However, an alternative process would impact very few claims, so that the overall impact on rates should be minimal. Also, it may be that the alternative mechanism may provide other positive benefits, such as reducing the number of claims that end up in litigation or allowing companies to be more aggressive in challenging unjust claims that will offset the additional cost.

Summary of Automobile No-Fault IME Process Comments

Criticisms

1. Injured persons are not being made whole and are not receiving benefits of the insurance protection for which they paid premiums.
2. Injured persons are being subjected to IMEs prematurely.
3. Treatment is being terminated before the injured person is made whole.
4. IME process is not independent or impartial.
5. Insurance companies hire out-of-state doctors that are biased in favor of the insurance company.
6. Doctors rely heavily on IME income from insurance companies and are naturally biased toward the company in order to protect income.
7. Examiners are not of same discipline as treating doctors.
8. Examining physicians have a bias against chiropractic treatment.
9. Doctors from out of state travel to the state to do IMEs, are booked heavily, and do exams superficially with suggestion that the end result is predetermined.
10. Doctors are not familiar with the injured party and only do minimal exam before concluding that no further treatment is necessary.
11. Resorting to litigation to settle IME no-fault treatment disputes is too costly, especially for small claims. They argue that the cost of taking depositions and paying experts to testify is too burdensome for the injured person. They argue that the no-fault law was offered as a way to minimize litigation so the claims, especially small claims, should be settled without forcing the parties to go to litigation.

Industry Response

1. No-fault law is working fine.
2. Very few claims go to an IME.
3. IMEs are requested only for those files that raise “red flags”.

4. Claims that end up in dispute involve treatment that does not match the injury or an injury that does not match the facts of the accident.
5. Many IMEs involve pre-existing conditions from previous accidents and are necessary to determine whether treatment is related to present or past injury.
6. IMEs allow the company to control unrelated, excessive, or exaggerated claims or claims not related to the accident, thereby keeping premiums to a minimum.
7. IMEs help control the costs of claims not reasonably medically necessary.
8. Very few claims go to litigation after an IME.
9. Out-of-state doctors are hired because very few local doctors are willing to perform IMEs because of time and bother of getting involved in a lawsuit and possibly a trial.
10. If a doctor is biased, bias will be revealed at the trial and the insurance company will be disadvantaged at the trial.
11. IMEs are not independent and should not be. The injured person selects a treating doctor and can choose a doctor that is friendly toward the injured person. The company has a corresponding right to an opinion by its doctor.
12. Claims that end up in dispute quite often involve a treating physician that has a history of questionable treatment practices.
13. The process works because if a dispute arises between the providers, the dispute can be resolved through litigation.
14. Companies are getting sued all the time. If the patient is truly injured, he or she will find a lawyer willing to sue.

Other States' Solutions

1. Minnesota requires binding arbitration for all disputes for claims of less than \$10,000. New York and Utah allow for voluntary arbitration. New York law also allows for informal conciliation of disputed claims. Florida allows for mediation of disputes of less than \$10,000. Examiner must be of the same specialty or profession as the treating provider.
2. Colorado uses a panel of examiners and provides names of five examiners to the parties in dispute, each of which strike two, leaving the last as the impartial examiner.

3. Certain states have developed guidelines and standards that govern the treatment of no-fault injuries, similar to those developed for workers compensation claims.
4. Some states have established peer review boards to resolve issues relating to necessity of medical treatment.
5. One state requires a prescription from a medical doctor for chiropractic treatment or massage or physical therapy.
6. Florida requires the injured person to pay 20% of the cost of medical treatment. Claims must be submitted within 35 days of treatment to be payable. Examiner must be actively practicing.
7. New York maintains list of examiners and selects the examiner, rather than allowing the insurer to select the examiner.
8. New Jersey refers disputes to a dispute resolution professional. The professional may request a medical review by a medical review organization that may require a separate medical examination by a provider of the same discipline. New Jersey Insurance Department rules include a list of standards for medical review organizations. Examiners must be active practitioners that obtain at least one-half of their income from practice in their area of specialty. The Department also sets a fee schedule for examinations.
9. Utah law allows for independent exams upon request of the company if the policy contains such a provision. To settle disputes over treatment, the law provides for a panel of three licensed physicians to examine the claimant and testify on the issue of the reasonable value of claimant's medical services or expenses. Panel must consist of health care professionals within the same license classification and specialty as the provider of the claimant's medical services or expenses. The Insurance Department conducts and publishes a relative value study of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person.
10. Massachusetts law allows the insurance company to schedule exams as necessary. The Company selects the examiner, but as a practice the plaintiff attorneys will refuse to send a claimant to a doctor that is considered unfair.

Other Suggestions

1. Make no-fault coverage optional or eliminate no-fault altogether.
2. Force examiner to disclose amount and history of IME income before examination occurs.

3. Require that the examiner be a regular practicing physician.
4. Require examiner to be of same discipline as the treating doctor.
5. Allow for third exam, with examiner selected by injured person but paid for by insurance company.
6. Allow injured person a voice in selecting the examiner.
7. Allow a third party in the examination room.
8. Video the examination.
9. Require an insured to share in the cost of medical treatment (80/20).

Related Issues

1. Insurance companies complain that they are not able to negotiate discounts from the medical community for services, unlike health insurance companies that negotiate discounts on provider rates, and must pay the highest rates that are charged by the medical service providers. To address this issue:
 - a. Some states set fees, sometimes based on workers compensation fee schedules, sometimes on Medicare + 10%.
 - b. Some states allow insurance companies to develop a provider network and offer discounts or increased benefits for using the network.
2. Disputes over whether or not no-fault injuries deserve continuing treatment quite often include the dispute over whether or not no-fault benefits should cover “maintenance care” as distinguished from “supportive care”. To address this issue, other states:
 - a. Allow a specified number of treatments for all care, including maintenance.
 - b. Use peer review process to limit number of treatments or otherwise control the care allowed.
 - c. Use workers compensation or other guideline for determining care that is medically necessary.

**North Dakota Insurance Department
Case File / Docket Card Report**

CO-01-056 Study of Motor Vehicle Insurance Independent Medical Examinations

Opened: 7/23/01

Closed:

<u>No.</u>	<u>Filed</u>	<u>Description</u>
1	6/13/01	Comments of Rod Pagel of Pagel Weikum
2	6/13/01	Comments of Craig Boeckel
3	6/14/01	Comments of Pat Ward and Jeff Meert of State Farm
4	6/14/01	Comments of Allstate
5	6/22/01	Comments of Duane Ilvedson
6	6/26/01	Comments of William Dooley of American Family
7	6/29/01	Comments of Richard Jeffries
8	7/3/01	Comments of Pat Ward
9	7/9/01	Questionnaire to Automobile Claims Operations Managers
10	7/12/01	Ltr to Ward, Boeckel, Bossart, and Traynor enclosing questionnaire
11	10/5/01	Ltr to Fargo Public Library re room reservation
12	10/19/01	Ltr to Ward, Boeckel, Bossart, and Traynor enclosing Order Opening Investigation and draft notice
13	10/19/01	Order Opening Investigation and Scheduling Hearings
14	10/19/01	Affidavit of Mailing
15	10/22/01	Memo to Senate and House Transportation Committees enclosing Order and draft notice
16	10/30/01	Ltr to State Bar Association and Trial Lawyers Association enclosing Order
17	11/8/01	Ltr from Lance Schreiner
18	11/13/01	Comments - Dee Kraft
19	11/13/01	Email from Paula Grosinger
20	11/11/01	Notice from Bismarck Tribune
21	11/14/01	Senate Bill No. 2288
22	11/14/01	Attendance Sheet - Fargo
23	11/14/01	Lee Hagen Exhibit 1 - Dr. Robert H. Fielden's Answers to First Supplemental Interrogatories
24	11/14/01	Lee Hagen Exhibit 2 - IME Notebooks
25	11/16/01	Comments - Steven Marquart
26	11/19/01	Attendance Sheet - Minot

<u>No.</u>	<u>Filed</u>	<u>Description</u>
27	11/19/01	Comments - R. James Maxson
28	11/20/01	Ltr from Madison Chiropractic re independent review organizations
29	11/23/01	Ltr from Lee Hagen
30	11/28/01	Attendance Sheet - Bismarck
31	11/28/01	Comments - Byron Blowers
32	11/30/01	Comments - Rod St. Aubyn
33	12/3/01	Ltr from Corey Quinton re transcription
34	12/4/01	Ltr to Corey Quinton re transcription
35	12/10/01	Transcription - Fargo Hearing
36	12/10/01	Transcription - Minot Hearing
37	12/10/01	Transcription - Bismarck Hearing
38	12/14/01	Comments - William E. McKechnie
39	12/19/01	Email comment re testimony at Fargo hearing
40	12/26/01	Comments - Michael Williams
41	12/28/01	Comments - American Family (Kathryn Weber)
42	2/7/02	Ltr from Corey Quinton enc check and requesting copy of transcript
43	2/7/02	Ltr to Corey Quinton enc Bismarck transcript
44	2/7/02	Ltr to Bill Herauf enc part of Bismarck transcript
45	2/19/02	Ltr requesting information from Medical Assn, Chiropractic Assn, Physical Therapy Assn, and Massage Therapy Assn
46	4/22/02	Ltr from Wade Burgess, Physical Therapy Association
47	4/30/02	Ltr from Jeffrey Galt, Chiropractic Association
48	6/26/02	Ltr to Bill Herauf enclosing survey
49	7/4/02	Ltr from Bill Herauf
50	9/20/02	NAIC State Survey
51	9/20/02	NAIC No-Fault Auto Insurance: A Survey

9/20/02

Part II

PIP Closed Claim Study

2001-2002

Report
by
the

North Dakota Insurance Department

PIP Closed Claim Study
2001-2002
Report

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PIP Closed Claim Study 2001-2002 Summary

Background

Senate Bill No. 2288, as enacted by the 57th Legislative Assembly, requires the Insurance Commissioner to submit a report to the Legislative Council regarding motor vehicle insurance independent medical examinations (IME).

Prior to the 57th Legislative Assembly the Department had conducted a limited closed claim survey of Personal Injury Protection/No Fault (PIP) claims (February 2001) for the purpose of providing statistical data to the Legislative Assembly for use in its deliberations on proposed changes to the no-fault laws.

Upon receiving the mandate from the Legislative Assembly to submit a report to the Legislative Council, the Department determined that a second more comprehensive PIP closed claim study was needed in order to collect objective data which could be considered along with other information necessary for the preparation of the required report on IMEs.

PIP Closed Claim Study 2001-2002 Summary

Study Description

The PIP Closed Claim Study – 2001-2002 was conducted with the cooperation of the top 25 automobile insurance writers in the state (based upon year 2000) who then wrote 82% of the total market.

Each company was provided with a reporting form (refer to Exhibit 1 of this report for a copy of the reporting form) to be completed by the claims representative upon closing a no-fault claim file.

For those claims which did not result in an Independent Medical Examination (IME) or an Independent Records Review (IRR), the form required the reporting of 8 data elements. If the claim did result in an IME or IRR, then an additional 18 data elements were required to be completed.

The completed forms were returned to the Department where the data was entered into a database.

The study collected PIP closed claim information from August 1, 2001, through August 30, 2002.

PIP Closed Claim Study 2001-2002 Summary

Data Sheet

Disclaimer: The information contained within is intended to provide a quick and easy read of the data results found in the PIP closed claim study. However, the data listed below is just that, data. Caution must be exercised when trying to draw conclusions on some of the data elements alone. In some instances the volume of actual data is not sufficiently credible to be reliable and in some instances a data element by itself or out of context with other information is unreliable. Please refer to the summary for further clarification, explanation of terms, and interpretation of the data.

Aggregate Number of Claims, IMEs, Terminations, and Lawsuits

	Category	No. of Claims	No. of Claims	Percent
1	Total closed claim count of the top 25 insurance companies for the August 2001 to August 2002 time period Claims which resulted in an IME Claims which resulted in an IRR	4,371	148 54	3.4% 1.2%
2	Total IME claims IME claimants which were terminated	148	122	82.4%
3	Total IRR claims IRR claimants which were terminated	54	29	53.7%
4	Total IME terminated claims IME claimants who complained or requested reconsideration	122	31	25.4%
5	Total IRR terminated claims IRR claimants who complained or requested reconsideration	29	6	20.7%
6	Total IME terminated claims IME claimants who filed a lawsuit	122	8	6.6%
7	Total IRR terminated claims IRR claimants who filed a lawsuit	29	2	6.9%
8	Total claimants who filed a lawsuit Lawsuits that were resolved by trial	10	2	20%

	Category	No. of Claims	No. of Claims	Percent
9	Total lawsuits that were resolved by trial Results adverse to the company	2	1	50%
10	Total claimants who filed a lawsuit Lawsuits settled prior to trial with results adverse to company	10	6	60%

Benefits Paid to Claimants

	Category	Total Claims for Category	Average Amount of Benefits Paid
1	Total claims for which a PIP benefit was paid Average amount of benefits paid	3,999	\$3,171
2	Average amount of benefits paid for claims in which an IME was done	148	\$8,874
3	Average amount of benefits paid for claims in which an IRR was done	54	\$7,280

Cost to Companies for IMEs and IRRs

	Category	Total Claims for Category	Range of Cost	Average Cost
1	IME provider fees	148	\$150 - \$4,454	\$1,324
2	IME additional provider expenses	148	\$0 - \$1,500	\$57
3	Total cost to a company for IME provider fees and expenses		\$150 - \$4,649	\$1,381
4	IME claimant costs to attend	148	\$0 - \$646	\$30
5	Total cost to a company for IME provider fees, expenses, and claimant expenses		\$220 - \$4,844	\$1,411
6	IRR provider fees	54	\$0 - \$1,500	\$342
7	IRR additional provider expenses	54	\$0 - \$1,255	\$72
8	Total cost to a company for IRR provider fees and expenses		\$0 - \$1,834	\$414

IME Providers, Exams, and Locations and IRRs

	Category	Total Claims for Category	Claims Affected	Percent
1	Number of IME exams in which the type of examiner differed from the primary provider	148	50	34%
2	Number of IRR exams in which the type of examiner differed from the primary provider	54	16	30%
3	Most frequent IME providers and the frequency in which their exam resulted in termination:			
	Physician #1	20	16	80%
	Chiropractor #1	15	15	100%
	Physician #2	15	12	80%
	Physician #3	10	10	100%
	Physician #4	8	8	100%
4	Most frequent IME company/vendors and the frequency in which their exam resulted in termination:			
	Medical Evaluation, Inc.	38	36	95%
	Mid-America Chiro Consultants	19	17	89%
	No Name Given	12	10	83%
	Certified Medical Evaluations	11	11	100%
	Independent	9	8	89%
5	Most frequent IRR providers and the frequency in which their exam resulted in termination:			
	No Name Given	6	0	0%
	Chiropractor A	5	3	60%
	Chiropractor B	4	3	75%
	Physician A	2	0	0%
	Physician B	2	2	100%
6	Most frequent IRR company/vendors and the frequency in which their exam resulted in termination:			
	National Health Resources	14	11	79%
	Medical Evaluation, Inc.	11	8	73%
	No Name Given	6	0	0%
	Certified Medical Evaluations	4	1	25%
	Concentra	4	0	0%

7	IME locations most frequently used: Bismarck, ND Moorhead, MN Fargo, ND Grand Forks, ND West Fargo, ND	148	61 34 13 10 7	41% 23% 9% 7% 5%
8	IMEs performed in state vs. out of state In state Out of state	148	100 48	68% 32%

Injury Type and Prior Condition

	Category	Total Claims for Category	Claims Affected	Percent
1	Claims in which the claimant had a similar condition previous to the accident	4,371	550	12.6%
2	IME claims in which the claimant had a similar condition previous to the accident	148	81	54.7%
3	IRR claims in which the claimant had a similar condition previous to the accident	54	15	28%
4	Types of injury in total closed claims: Neck Back Head Arm Leg Other * Percentages will not add up to 100% as some claims involved multiple injury types.	4,371	2,055 1,627 830 470 501 1,400	47% 37% 19% 11% 11% 32%
5	Types of injury in which IME was performed: Neck Back Head Arm Leg Other * Percentages will not add up to 100% as some claims involved multiple injury types.	148	123 107 23 14 16 26	83% 72% 16% 9% 11% 18%

6	Types of injury in which IRR was performed:	54		
	Neck		42	78%
	Back		37	69%
	Head		9	17%
	Arm		10	19%
	Leg		11	20%
	Other		8	15%
	* Percentages will not add up to 100% as some claims involved multiple injury types.			

Timing of Events

	Category	Total Claims for Category	Range of Days	Average Days
1	Length of time PIP claim remained open	4,371	0 – 5,805	334
2	Length of time from the date of claim to the date claimant was informed of a scheduled IME	148	25 – 4,382	641
3	Length of time from the date the claimant was notified of a scheduled IME to the date the IME was performed	148	10 – 569	47
4	Length of time between the exam date and the date upon which IME benefits were terminated	122	1 – 652	83

Note: In the course of our analyzing the data, we noted several inconsistencies in the various date information captured. These inconsistencies may make the above comparisons less reliable as they may skew the results.

Volume and Frequency by Company

	Category	Total Closed Claims	Claims Affected	Percent
1	Companies with the largest number of PIP closed claims and respective IMEs performed: <div> <div>State Farm</div> <div>American Family</div> <div>Nodak Mutual</div> <div>Farmers Insurance Exchange</div> <div>Progressive NW</div> </div>	<div> <div>1,124</div> <div>806</div> <div>546</div> <div>446</div> <div>393</div> </div>	<div> <div>25</div> <div>68</div> <div>11</div> <div>11</div> <div>3</div> </div>	<div> <div>2%</div> <div>8%</div> <div>2%</div> <div>2%</div> <div>1%</div> </div>
2	Companies with the largest number of PIP closed claims and respective IRRs performed: <div> <div>State Farm</div> <div>American Family</div> <div>Nodak Mutual</div> <div>Farmers Insurance Exchange</div> <div>Progressive NW</div> </div>	<div> <div>1,124</div> <div>806</div> <div>546</div> <div>446</div> <div>393</div> </div>	<div> <div>5</div> <div>5</div> <div>1</div> <div>34</div> <div>0</div> </div>	<div> <div>0%</div> <div>1%</div> <div>0%</div> <div>8%</div> <div>0%</div> </div>
3	Companies with the largest number of IMEs (regardless of overall volume): <div> <div>American Family</div> <div>State Farm</div> <div>Nodak Mutual</div> <div>Farmers Insurance Exchange</div> <div>Grinnell Mutual</div> </div>		<div> <div>68</div> <div>25</div> <div>11</div> <div>11</div> <div>7</div> </div>	
4	Companies with the largest number of IRRs (regardless of overall volume): <div> <div>Farmers Insurance Exchange</div> <div>Allstate Insurance Company</div> <div>State Farm</div> <div>American Family</div> <div>Nodak Mutual</div> </div>		<div> <div>34</div> <div>7</div> <div>5</div> <div>5</div> <div>1</div> </div>	

PIP Closed Claim Study

2001-2002

Summary

Findings

In reviewing the statistics summarized in this report, it is important to consider each observation in light of the relative credibility of the data behind it.

Typically when analyzing claim data for frequency information, you need over a thousand claims to obtain fully credible indications (1,084 claims is a common full credibility standard in actuarial literature).

For average claim cost and expenditure information, you need several thousand claims to get fully credible results.

Therefore, you should exercise caution when reviewing some of the observations noted in the study, particularly those observations concerning average claim and expenditure information involving less than a thousand claims.

During the 13-month period from August 2001 through August 2002, the insurers reported closing 4,371 PIP claims. Of these 4,371 closed claims, 3,999 had some form of PIP benefit paid to the claimant. Of these claimants, 202 or 5.1% had an Independent Medical Examination/Independent Record Review (IME/IRR) performed at the discretion of the company. Considering the large volume of claims, this 5.1% is considered a credible indication, and is comparable to the 3.5% figure reported in our previous study of February 2001 (see Exhibit 4). It is fair to say that relatively few PIP claims require an IME/IRR.

Of the 202 claimants that underwent an IME/IRR, 151 or 75% had their benefits terminated as a result of the IME/IRR. This volume of claims is insufficient to be considered credible, but the 75% figure is comparable to the 90% figure reported in our previous study. It is fair to say that a significant majority of PIP claims for which an IME/IRR is used result in a termination of benefits.

Note that of the 3,999 PIP claims that had benefits paid, 151 or 3.8% were terminated as a result of an IME/IRR. Again, as this figure is based upon a large volume of claims, it is considered credible, and shows that relatively few PIP claims have their benefits terminated as a result of an IME/IRR.

Of the 151 claimants whose benefits were terminated as a result of an IME/IRR, 37 (24.5%) requested the company to reconsider their benefits. The volume of claims in this comparison is too low for one to draw any credible conclusions. However, the results are again comparable with those reported in our previous study (28% requested the company to reconsider their position).

Of the 151 claimants whose benefits were terminated as a result of an IME, 10 (6.6%) filed a lawsuit against the company. Two of these lawsuits were resolved by trial, with one resulting in a decision adverse to the company. The volume of claims for these observations is far too low for one to draw any meaningful conclusions. However, they are again consistent with the figures reported in our previous study.

Based upon the 148 claims in which an IME was performed, the fee for the IME provider ranged from \$150 to \$4,454, with an average of \$1,324. Additional provider expense fees ranged from \$0 to \$1,500, with an average of \$57. In total, amounts paid to the IME provider ranged from \$150 to \$4,649, with an average of \$1,381.

Based upon the 54 claims in which an IRR was performed, the fee for the IRR provider ranged from \$0 to \$1,500 with an average of \$342. Additional expenses ranged from \$0 to \$1,255, with an average of \$72. Total expenses paid to the IRR provider ranged from \$0 up to \$1,834, with an average of \$414.

Again, we caution readers from drawing conclusions on the dollar figures noted above due to the small volume of claims supporting these figures.

The data captured on the Closed Claim Survey did allow us to look at the frequency of IMEs/IRRs performed by both the provider and the IME company/vendor. We have summarized that information in the Data Sheet, along with the percentage of times the IMEs resulted in a termination of benefits. While the percentages appear high, caution must be used in drawing conclusions from this summary as the volume of claims behind each provider observation is very small and thus not credible.

Based upon the 148 claims for which an IME was performed, 68% of the IMEs were performed within the state. While 148 claims is insufficient volume to assign significant credibility to the 68% figure, the majority of IMEs in this study were conducted within the state.

Based upon the 148 claims for which an IME was performed, the claimant's primary medical service provider was a physician 48% of the time and a chiropractor 46% of the time. Again, the 148 claims are not of sufficient volume to make the above noted percentages credible. However, within this study IMEs appear to have been required as frequently on claims involving physicians as with chiropractors.

Of the total 4,371 PIP claims, the claimant had a previous similar injury prior to the accident 550 or 12.6% of the time. Of the 148 PIP claims in which an IME was requested, 81 or 54.7% of the claimants had a previous similar injury. Of the 54 claims in which an IRR was requested, 15 or 28% had a previous similar injury. Again, there is not a large enough volume of data to give credible indications, but these comparisons suggest that IMEs and IRRs may be requested more frequently on cases in which a previous similar injury existed.

Looking at claim frequencies by injury type, we see that of the 4,371 total PIP claims, 47% involved neck injuries and 37.2% involved back injuries. Based upon the claim volume, these are credible statistics.

Of the total 202 PIP claims for which an IME/IRR was performed, 81.7% involved a neck injury and 71.3% involved back injuries. The 202 claims is not a sufficiently large enough sample to obtain credible indications; however, the evidence suggests that claims involving neck and back injuries account for a larger portion of IME/IRR claims than they do for the overall PIP claim population.

The claim data shows that the length of time a PIP claim remained open ranged from 0 days up to 5,805 days and averaged 334 days.

For the 148 claims in which an IME was done, the length of time from the date of the claim to the date the claimant was informed of a scheduled IME ranged from 25 days up to 4,382 days with an average time of 641 days.

For the 148 claims in which an IME was done, the length of time from the date the claimant was notified of a scheduled IME to the date the IME was performed ranged from 10 to 569 days with an average of 47 days.

For the 122 claims in which an IME resulted in termination of benefits, the time between the exam date and the date upon which benefits were terminated ranged from 1 day up to 652 days with an average time of 83 days.

PIP Closed Claim Study 2001-2002 Summary

Conclusions

Based upon these figures, we can conclude:

- Of all PIP claims involving some benefits being paid, relatively few require an IME to be performed.
- For those claims in which an IME was performed, the majority tend to result in the termination of benefits.
- Because of insufficient claim volume, we are unable to make any credible observations regarding average costs for providers of IMEs.
- For claims involved in this study IMEs/IRRs were performed more frequently in-state than out-of-state.
- For claims involved in this study the frequency in which an IME was requested where the primary medical provider was a chiropractor is equal to the frequency in which the primary medical provider was a physician.
- For claims involved in this study IMEs/IRRs were requested more frequently on those claims in which a previous similar injury existed.

PIP Closed Claim Study 2001-2002 Summary

Exhibits

For reference the following exhibits have been appended to this report:

1. The PIP Closed Claim Study 2002-2002 reporting form used by companies to report data to the Department.
2. A spreadsheet with the numerical data results on an aggregate basis by company.
3. A spreadsheet showing the data results by company for specific items not included in Exhibit 2.
4. The PIP Closed Claim Study Report of February 2001.

**North Dakota PIP Data Collection
Questions for 2001-2002 Closed Claims Study**

Complete one form for each closed PIP claim (claimant) from
August 1, 2001, to August 30, 2002

Insurance Company _____

1. Claim number _____
2. Claimant number (in the case of multiple claimants,
designate #1, #2, #3, etc.) _____
3. Date of claimed injury _____
4. Type of injury or injuries -
Circle appropriate injuries: Neck Back Head Arm Leg Other
5. Did claimant have a similar condition/medical treatment
prior to date of claimed injury _____ Yes No
6. Date claim filed _____
7. Date the file was closed _____
8. Total amount of PIP (no-fault) benefits paid to the claimant _____

Complete Questions 9 to 26 only if an IME or IRR was performed:

9. Specialty of claimant's primary medical service provider -
Circle one: Physician Physical Therapist Chiropractor Other
10. What type of review was conducted?
Circle one: IME-Physical Exam Independent Records Review
11. Date the claimant was informed that an IME was to be performed ... _____
12. Place the IME was performed (city) _____
13. Date the IME was performed _____
14. Were benefits terminated as a result of information from the IME/IRR? Yes No
15. Date the benefits ceased _____
16. Did claimant complain to company or request
reconsideration of termination? Yes No
17. Did claimant file a lawsuit against the company
as a result of termination? Yes No
18. Was claimant's lawsuit resolved by trial? Yes No
19. Was claimant's lawsuit resolved by trial with a
decision adverse to the company? Yes No N/A
20. Was claimant's lawsuit settled prior to trial with a
compromised or negotiated settlement? Yes No N/A
21. Name of the IME/IRR medical service provider _____
22. Specialty of IME/IRR medical service provider -
Circle one: Physician Chiropractor Nurse Other
23. Name of the IME/IRR company/vendor _____
24. Fee paid to the IME/IRR provider for conducting the exam/review ... _____
25. Amount paid to the IME/IRR provider for expenses
and other related costs _____
26. Amount paid to the claimant to cover costs to attend the IME
(i.e., transportation, lodging, meals, wage loss, etc.) _____

Contact Person _____ Telephone _____

PIP CLOSED CLAIM STUDY
August 2001 thru August 2002

Company Name	Total # PIP Claim Files Closed	Total # Claimants Paid No-Fault Benefits	Total # for Whom IME was Requested by Company	Total # Benefits Terminated as Result of IME	Total # Terminated Who Requested Reconsideration	Total # Terminated Who Filed Lawsuits	Total # Lawsuits Resolved by Trial	Total Resolved by Trial with Results Adverse to Company	Total # Lawsuits Settled
Allied Ins Co	11	10	4	1	1	0	0	0	0
Allied Mutual Ins Co	1	1	0	0	0	0	0	0	0
Allied P&C Ins Co	43	42	1	0	0	0	0	0	0
Allstate Ins Co	213	210	13	5	5	0	0	0	0
AMCO Ins Co	35	34	1	1	1	0	0	0	0
American Family Mutual Ins Co	806	781	73	66	66	9	0	0	0
American States Ins Co	3	3	1	1	1	0	0	0	0
Center Mutual Ins Co	165	165	5	5	5	2	1	0	0
Dairyland Ins Co	54	39	0	0	0	0	0	0	0
Dakota Fire Ins Co	131	118	1	0	0	0	0	0	0
Depositors Ins Co	23	23	2	1	1	0	0	0	0
EMCASCO Ins Co	24	20	0	0	0	0	0	0	0
Employers Mutual Cas Co	31	30	1	0	0	0	0	0	0
Farmers Ins Exchange	446	387	45	28	28	7	1	0	0
First Nat Ins Co of America	3	3	0	0	0	0	0	0	0
Grinnell Mut Rein Co	148	148	7	7	7	7	5	1	1
Mid-Century Ins Co	8	8	0	0	0	0	0	0	0
Midwest Cas Ins Co	7	6	2	2	2	0	0	0	0
Milbank Ins Co	71	62	1	1	1	1	1	0	1
Nationwide Mut Ins Co	8	4	0	0	0	0	0	0	0
Nationwide P&C Ins Co	1	1	0	0	0	0	0	0	0
Nodak Mutual Ins Co	546	529	12	9	9	1	0	0	0
North Star General Ins Co	34	33	0	0	0	0	0	0	0
Progressive NW Ins Co	393	271	3	2	2	0	0	0	0
SAFECO Ins Co of America	42	37	0	0	0	0	0	0	0
State Farm	1124	1034	30	22	22	9	2	1	1
	4371	3999	202	151	151	37	10	2	6

PIP CLOSED CLAIM STUDY SUMMARY OF CLAIM FREQUENCIES BY INJURY TYPE

CompanyName	FREQUENCY OF INJURY TYPES OVER TOTAL PIP CLAIM SURVEY POPULATION										FREQUENCY OF INJURY TYPES OVER IME/IRR CLAIM POPULATION															
	Total # of PIP Claims Reported	Freq of Neck Inj	% of Total	Freq of Back Inj	% of Total	Freq of Head Inj	% of Total	Freq of Arm Inj	% of Total	Freq of Leg Inj	% of Total	Freq of Other Inj	% of Total	Total # IME/IRR Claims	Freq of Neck Inj	% of Total	Freq of Back Inj	% of Total	Freq of Head Inj	% of Total	Freq of Arm Inj	% of Total	Freq of Leg Inj	% of Total	Freq of Other Inj	% of Total
State Farm American Family Mutual Ins Co	1124	539	48.0%	415	36.9%	208	18.5%	107	9.5%	107	9.5%	350	31.1%	30	28	93.3%	23	76.7%	2	6.7%	4	13.3%	2	6.7%	7	23.3%
	806	408	50.6%	327	40.6%	104	12.9%	67	8.3%	95	11.8%	337	41.8%	73	65	89.0%	55	75.3%	8	11.0%	6	8.2%	9	12.3%	11	15.1%
Nodak Mutual Ins Co	546	248	45.4%	189	34.6%	78	14.3%	39	7.1%	44	8.1%	190	34.8%	12	11	91.7%	9	75.0%	5	41.7%	0	0.0%	0	0.0%	2	16.7%
Farmers Ins Exchange	446	225	50.4%	208	46.6%	102	22.9%	69	15.5%	77	17.3%	113	25.3%	45	33	73.3%	31	68.9%	7	15.6%	8	17.8%	9	20.0%	9	20.0%
Progressive NW Ins Co	393	154	39.2%	123	31.3%	80	20.4%	53	13.5%	49	12.5%	164	41.7%	3	2	66.7%	2	66.7%	0	0.0%	1	33.3%	1	33.3%	0	0.0%
Allstate Ins Co	213	83	39.0%	71	33.3%	62	29.1%	45	21.1%	41	19.2%	28	13.1%	13	10	76.9%	8	61.5%	4	30.8%	4	30.8%	5	38.5%	0	0.0%
Center Mutual Ins Co	165	91	55.2%	69	41.8%	38	23.0%	19	11.5%	20	12.1%	23	13.9%	5	3	60.0%	3	60.0%	2	40.0%	0	0.0%	1	20.0%	0	0.0%
Grinnell Mut Rein Co	148	53	35.8%	43	29.1%	33	22.3%	17	11.5%	11	7.4%	27	18.2%	7	3	42.9%	4	57.1%	0	0.0%	0	0.0%	2	28.6%	0	0.0%
Dakota Fire Ins Co	131	72	55.0%	51	38.9%	24	18.3%	11	8.4%	8	6.1%	35	26.7%	1	0	0.0%	1	100.0%	0	0.0%	0	0.0%	0	0.0%	1	100.0%
Milbank Ins Co	71	43	60.6%	33	46.5%	29	40.8%	13	18.3%	15	21.1%	35	49.3%	1	1	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Dairyland Ins Co	54	20	37.0%	18	33.3%	16	29.6%	8	14.8%	6	11.1%	17	31.5%													
Allied P&C Ins Co	43	18	41.9%	6	14.0%	10	23.3%	4	9.3%	4	9.3%	14	32.6%	1	1	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	100.0%
SAFECO Ins Co of America	42	26	61.9%	25	59.5%	6	14.3%	1	2.4%	4	9.5%	7	16.7%	1	1	100.0%	1	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
AMCO Ins Co	35	13	37.1%	8	22.9%	7	20.0%	1	2.9%	0	0.0%	16	45.7%													
North Star General Ins Co	34	16	47.1%	4	11.8%	6	17.6%	4	11.8%	5	14.7%	12	35.3%													
Employers Mutual Cas Co	31	11	35.5%	5	16.1%	7	22.6%	4	12.9%	5	16.1%	8	25.8%	1	1	100.0%	0	0.0%	1	100.0%	0	0.0%	0	0.0%	0	0.0%
EMCASCO Ins Co	24	9	37.5%	7	29.2%	4	16.7%	0	0.0%	3	12.5%	5	20.8%													
Depositors Ins Co	23	7	30.4%	7	30.4%	3	13.0%	3	13.0%	3	13.0%	5	21.7%	2	0	0.0%	2	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Allied Ins Co	11	6	54.5%	6	54.5%	3	27.3%	2	18.2%	0	0.0%	5	45.5%	4	4	100.0%	3	75.0%	2	50.0%	1	25.0%	0	0.0%	0	0.0%
Mid-Century Ins Co	8	4	50.0%	3	37.5%	5	62.5%	0	0.0%	0	0.0%	0	0.0%													
Nationwide Mut Ins Co	8	0	0.0%	1	12.5%	0	0.0%	0	0.0%	1	12.5%	6	75.0%													
Midwest Cas Ins Co	7	3	42.9%	4	57.1%	3	42.9%	3	42.9%	2	28.6%	3	42.9%	2	1	50.0%	1	50.0%	1	50.0%	0	0.0%	0	0.0%	1	50.0%
American States Ins Co	3	3	100.0%	2	66.7%	1	33.3%	0	0.0%	0	0.0%	0	0.0%		1	100.0%	1	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
First Nat Ins Co of America	3	2	66.7%	1	33.3%	1	33.3%	0	0.0%	0	0.0%	0	0.0%													
Allied Mutual Ins Co	1	1	100.0%	1	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	1	100.0%	1	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Nationwide P&C Ins Co	1	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	100.0%	0	0.0%													
	4371	2055	47.0%	1627	37.2%	830	19.0%	470	10.8%	501	11.5%	1400	32.0%	202	165	81.7%	144	71.3%	32	15.8%	24	11.9%	27	13.4%	34	16.8%

Personal Injury Protection (PIP)
Closed Claim Study Report

Study Period :
June – November 2000

North Dakota Insurance Department
February 2001

Personal Injury Protection (PIP) Closed Claim Study

I. Background

The Insurance Department has over the years received calls and complaints from consumers and attorneys regarding the provisions of the Personal Injury Protection (PIP) or no-fault statute. The issues raised included the need to raise the no-fault limit, the need to change the coordination of benefits limit, the need to address the Independent Medical Examination (IME) process, and the need to provide the consumer with a viable alternative to dispute a termination of benefits. The primary and most frequent concerns have been those regarding the IME process.

The Insurance Department met with the domestic insurance industry to discuss the concerns raised and to determine if specific legislation could be proposed to address some of the concerns. The consensus was that before legislation is proposed it would be prudent to collect information which could be used to help in assessing the need for any change, if any. Further it was felt that the legislature would want data to support any changes that might be proposed.

It was agreed that the Department would conduct a study of PIP (no-fault) claims.

II. Study Description

The Department elected to contact the top 25 insurance carriers (based upon recent market share reports) who write in excess of 82.5% of the business in the state for purposes of the study. The study would require the insurance companies to report specific information regarding all PIP claims closed from June 2000 through November 2000. A form with 10 specific data questions was sent to the companies requesting a reporting deadline of December 15, 2000. See Appendix A for a copy of the letter and questions.

The study is the first attempt at data collection since a target market conduct examination completed in 1990.

III. Study Results

The results of the data collection are found in a chart attached as Appendix B. Note: 24 out of the 25 companies responded with data. The chart lists 19 companies due to the fact that some companies reported with a group, i.e., Allstate and Allstate Indemnity combined their data.

The chart lists the responding companies and groups of companies in order of premium volume from highest to lowest.

The aggregate totals for each of the ten data questions are as follows:

1. PIP Claim Files Closed (June-Nov)	1,747
2. Claimants Paid No-Fault Benefits	2,061
3. Claimants Paid Maximum No-Fault Benefits	38
4. Claimants for Whom an IME was requested by Company	74
5. Claimants Whose Benefits were Terminated as a result of IME	67
6. Claimants Who Complained or Requested Reconsideration after IME	19
7. Claimants Who were Terminated that filed Lawsuit	4
8. Claimants Whose Lawsuits were Resolved by Trial	0
9. Claimants Whose Lawsuits were Resolved by Trial/Adverse to Company	0
10. Claimants Who Settled Prior to Trial /Results Adverse to Company	4

IV. Findings

Credibility – The degree to which one can rely on indications based on a set of data is generally known as credibility. From an actuarial perspective, indications based upon a large volume of data tend to be more credible than those based upon a small volume of data.

- The volume of data from questions 1 and 2 is such that frequency indications may be considered as credible.
- The volume of data from questions 3, 4, and 5 is such that frequency indications may be considered as partially, or marginally credible.
- The volume of data from questions 6 through 10 is such that frequency indications are not credible.

For purposes of analysis it is helpful to demonstrate the significance or relationship in a percentage rather than just numerically.

Using the Total Number of Claimants Paid No-Fault Benefits as a base (2,061) we find that:

- The Number of Claimants Paid the Maximum No-Fault Benefit is 38 or 1.8%. The number of claimants receiving the maximum limit of \$30,000 is found to be significantly small. The lack of any substantial frequency in which claimants are routinely demonstrating the need for maximum benefits suggests that the limit is adequate.
- The Number of Claimants For Whom an IME was requested by Company is 74 or 3.6%. The percentage of claimants required to submit to an IME is found to be small. Although this study did not seek this information, a 1990 Insurance Department review of company PIP files indicated a major portion of IMEs occurred in soft tissue injury cases.

Using the Number of Claimants For Whom an IME was requested by Company (74) as a base we find that:

- Claimants Whose Benefits were Terminated as a result of IME is 67 or 90.5%. The number of claimants terminated after an IME is found to be high in relation to the number required to undergo an IME. However, as indicated above the overall number of IMEs is considered to be small in relation to all claimants. The review in 1990 also indicated a high termination rate of 84%.
- Claimants Who Complained or Requested Reconsideration after IME is 19 or 25.7%. Conversely, 74.3% did not request reconsideration from the company following termination.
- Claimants Who were Terminated After IME that filed Lawsuit is 4 or 5.4%. To the extent this number is statistically relevant, the number of claimants who filed a lawsuit after being terminated following an IME is small.
- Claimants Whose Lawsuits were Resolved by Trial is 0 or 0%.
- Claimants Whose Lawsuits were Resolved by Trial/Adverse to Company is 0 or 0%.
- Claimants Who Settled Prior to Trial /Results Adverse to Company is 4 or 5.4%. The number of claimants bringing a lawsuit and with a settlement adverse to the company is small but does represent all lawsuits.

V. Conclusions

The volume of data received in this study is limited which limits the credibility of the data. The data regarding the maximum benefit is marginally credible and in the opinion of the Department suggests that there is no need at this time to increase the maximum benefit limit.

Contact: Larry Maslowski
Director/Senior Analyst, Consumer Protection Division
(701) 328-4976



Glenn Pomeroy
Commissioner of Insurance

DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

COPY

April 12, 2000

Automobile Claims Department
Allstate Indemnity
3075 Sanders Road, Suite H1A
Northbrook, IL 60062-7127

RE: North Dakota Data Collection Project - PIP Closed Claim Study

Dear Sir/Madam:

Prior to the 1999 legislative session, the North Dakota Insurance Department was exploring ways that it might revise the current PIP (no-fault) laws to address a variety of concerns that have been raised over the years. Your company may even have participated in a 1998 Department survey designed to assess the potential fiscal impact on PIP premiums should some of the contemplated changes become law.

Based upon the scope of the proposals being considered, it was determined not to propose legislative changes in 1999 but rather to conduct an interim general market conduct evaluation to gather more information before proceeding. This decision was reached with the cooperation and input of representatives of the domestic and foreign insurance industry.

The Department and the industry have determined that the most efficient method to collect the desired Data is to conduct a Closed Claim Study on a going forward basis. Enclosed with this letter is a document specifically describing how to conduct the Closed Claim Study.

The top 25 automobile insurance carriers, including your company, are requested to participate in order to provide sufficient volume of data for the study.

Questions pertaining to the study should be directed to Charles Johnson, General Counsel, at (701) 328-4984.

Sincerely,

A handwritten signature in cursive script, appearing to read "Glenn Pomeroy", is written over the typed name.

Glenn Pomeroy
Commissioner
N.D. Insurance Department

GP/njb
Enclosure

April 12, 2000

RE: Data Collection Project - PIP (No Fault) Closed Claim Study

Insurance companies will compile certain no-fault information and report that information to the North Dakota Insurance Department by December 15, 2000. The information being requested will be compiled from North Dakota no-fault claim files only as you close those files between June 1, 2000, and November 30, 2000. As you close those files, we are requiring you to review the closed claim file and provide us with the following information:

1. Total number of PIP claim files closed.
2. Total number of individual claimants that were paid no-fault benefits under those files.
3. Total number of individual claimants that were paid the maximum no-fault benefit payable (\$30,000 per person).
4. Total number of individual claimants who received no-fault payments and your company requested an independent medical examination (IME) on those individuals.
5. Total number of individual claimants under all of those closed claim files where no-fault benefits were terminated as a result of the IME.
6. Total number of individual claimants who were advised by you as to the termination of benefits as a result of an IME and who contacted the company to complain or request reconsideration of their claim.
7. Total number of individual claimants who filed a lawsuit for no-fault benefits against the company after terminating benefits.
8. Total number of individual claimants who filed suit against the company for no-fault benefits that were resolved by trial to the court or a jury.
9. Total number of individual claimants who filed suit against the company which were resolved by trial and the decision was adverse to the company.
10. Total number of individual claimants who filed suit against the company and the company settled the matter prior to trial on terms that were adverse to the company.

Format: Excel or Lotus 1,2,3

Results: Send to Mike Andring, North Dakota Insurance Department, 600 East Boulevard Avenue, Dept. 401, Bismarck, ND 58505

NORTH DAKOTA PIP (NO FAULT) CLOSED CLAIM STUDY
JUNE - NOVEMBER 2000

Company	NAIC #	1999 Written Premiums in ('000's)	Total # of Claimants Paid			Total # of Claimants for Whom IME was Requested		Total # of Claimants where No-Fault Benefits Terminated as a Result of IME		Total # of Claimants Terminated After IME Who Complaind or Requested Reconsider.	Total # of Claimants Terminated Who Filed Lawsuit After IME	Total # of Claimants Whose Lawsuits Were Resolved by Trial	Total # of Claimants Whose Lawsuits Settled Prior to Trial with Results Adverse to Company
			PIP Claim Files Closed	No-Fault Maximum Benefits	Total # of Claimants Paid No-Fault Benefits	Total # of Claimants for Whom IME was Requested by Company	Total # of Claimants where No-Fault Benefits Terminated as a Result of IME	Total # of Claimants Terminated After IME Who Complaind or Requested Reconsider.					
State Farm Companies	25178 25143 60399	\$ 37,639	267	326	9	7	7	1					
American Family Insurance Company	19283	\$ 32,513	240	308	6	11	10	2					
Nodak Mutual Insurance Company	34592	\$ 25,533	196	211	3	6	5	1					
National Farmers Union Property and Casualty Companies	16217 21652	\$ 20,274	86	122	4	17	15	2					
Farmers Insurance Exchange Companies	21687	\$ 12,653	153	178	2	11	11	2					
	19232 19240												
Allstate Insurance Companies	37907	\$ 11,439	170	182	2	1	1	1					
	10863												
Dakota Fire Insurance Company, EMCASCO	21407	\$ 10,097	77	94	1	0	0	0					
Center Mutual Insurance Company	34606	\$ 6,354	70	85	2	1	1	1					
Progressive Northwestern Insurance Company	42919	\$ 6,119	86	98	2	2	1	0					
Grinnell Mutual Reinsurance Company	14117	\$ 5,813	36	49	0	4	4	3					
Milbank Insurance Company	41653	\$ 5,755	40	44	1	0	0	0					
	32700												
Auto Owners Insurance Companies	18988	\$ 5,531	68	57	0	3	3	0					
	37214 24740 19704												
SAFECO (American States) Companies	19690	\$ 5,140	42	60	2	0	0	0					
	25941 25968												
USAA Companies	18600	\$ 4,714	50	43	0	1	1	0					
AMCO Insurance Company	19100	\$ 2,823	62	75	1	4	4	2					
Heritage Mutual Companies (incl Greatway)	29793	\$ 2,536	72	92	1	1	1	1					
Dairyland Insurance Company	21164	\$ 1,591	26	30	2	4	2	2					
LeMars Mutual Insurance Company of Iowa	14389	\$ 1,433											
Midwest Casualty Insurance Company	36360	\$ 591	6	7	0	1	1	1					
TOTALS		\$ 198,548	1,747	2,061	38	74	67	19					